

REFERENCE TITLE: DES; notice; documents; electronic service

State of Arizona
House of Representatives
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2008

HB 2204

Introduced by
Representatives Hershberger, Bradley, Senator Landrum Taylor:
Representatives Ableser, Anderson, Barto, Campbell CH, Campbell CL,
DeSimone, McGuire, Murphy, Tobin, Senators Gray L, Huppenthal, Rios,
Soltero

AN ACT

AMENDING SECTION 23-671, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 4, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-682; AMENDING SECTIONS 41-1992 AND 41-1993, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 14, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1995; RELATING TO THE DEPARTMENT OF ECONOMIC SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-671, Arizona Revised Statutes, is amended to
3 read:

4 23-671. Appeal tribunals

5 A. The department shall establish one or more impartial appeal
6 tribunals to hear and decide disputed claims. Such appeal tribunals shall
7 consist in each case of one member who shall be a salaried examiner selected
8 on a nonpartisan merit basis. A person shall not participate on behalf of
9 the department in any case in which he is an interested party.

10 B. Within a reasonable time before the date set for a hearing, any
11 interested party to a hearing before the appeal tribunal may file an
12 affidavit for change of appeal tribunal and the department shall immediately
13 transfer the matter to another appeal tribunal. Reasonable time shall be
14 established by regulation. Except for cause not more than one change of
15 appeal tribunal shall be granted to any one party.

16 C. An appeal tribunal may refer any case before it or any question
17 involved therein to the appeals board established pursuant to section 23-672.

18 D. Unless an appeal is withdrawn or the proceedings are removed or
19 referred to the appeals board, an appeal tribunal, after giving reasonable
20 notice and affording all interested parties reasonable opportunity for a fair
21 hearing, shall make a decision. The parties to the appeal shall be promptly
22 notified of the decision and the reasons ~~therefore~~ **FOR THE DECISION**. The
23 decision shall become final unless within fifteen days after mailing **OR**
24 **ELECTRONIC TRANSMISSION** of the decision any interested party files a written
25 petition for review with the appeals board or the appeals board assumes
26 jurisdiction in accordance with ~~the provisions of~~ subsection ~~E~~ **F** of this
27 section.

28 E. ~~Prior to~~ **BEFORE** the date on which an appeal tribunal decision
29 becomes final, the appeals board on its own motion may, by notice mailed to
30 all interested parties, either:

31 1. Set aside the decision of the appeal tribunal and remand the
32 proceedings to another appeal tribunal for review and decision.

33 2. Order the taking of additional evidence.

34 3. Remove the proceedings to itself for review and decision.

35 F. If the appeals board removes a case to itself pursuant to this
36 section, the appeals board may order the taking of additional evidence and
37 may affirm, reverse, modify or set aside the decision of the appeal
38 tribunal. The appeals board shall promptly notify the parties to the
39 proceedings of its decision.

40 Sec. 2. Title 23, chapter 4, article 3, Arizona Revised Statutes, is
41 amended by adding section 23-682, to read:

42 23-682. Service of documents by electronic means

43 **NOTWITHSTANDING SECTION 41-1002, SUBSECTION B AND SECTION 41-1063, THE**
44 **APPEAL TRIBUNAL OR APPEALS BOARD, AS AN ALTERNATIVE TO ANY OTHER MEANS OF**
45 **SERVICE PERMITTED OR REQUIRED BY ANY LAW, MAY SERVE OR DELIVER ANY NOTICE,**

1 DECISION OR ORDER OR ANY OTHER DOCUMENT BY ELECTRONIC MEANS IF THE PARTY
2 BEING SERVED CONSENTS IN WRITING OR ON THE RECORD TO SERVICE BY ELECTRONIC
3 MEANS. SERVICE BY ELECTRONIC MEANS IS DEEMED COMPLETE ON TRANSMISSION.

4 Sec. 3. Section 41-1992, Arizona Revised Statutes, is amended to read:
5 41-1992. Hearing officers; powers and duties

6 A. The director shall appoint hearing officers who shall conduct such
7 hearings as the director may determine are necessary in accordance with law.

8 B. Within a reasonable time ~~prior to~~ BEFORE the date set for the
9 hearing any interested party to a hearing before the department may file an
10 affidavit for change of hearing officer against any hearing officer of the
11 department hearing such matters and the hearing officer shall immediately
12 transfer the matter to another hearing officer of the department who shall
13 preside ~~therein~~ IN THE MATTER. Reasonable time shall be established by
14 regulation. Not more than one change of hearing officer shall be granted to
15 any one party.

16 C. In every contested case, the hearing officer shall issue to all
17 interested parties a decision on the record ~~which~~ THAT includes findings of
18 fact and conclusions of law. The decision shall become the final decision of
19 the department within fifteen days after it is mailed OR ELECTRONICALLY
20 TRANSMITTED to an interested party unless a written petition for review has
21 been filed or the case has been removed to the appeals board for review and
22 decision.

23 D. The appeals board established pursuant to section 23-672 is
24 authorized to review any hearing officer's decision ~~upon~~ ON timely filing of
25 a petition for review by an interested party. On review, the appeals board
26 may affirm, reverse, modify or set aside a hearing officer's decision or
27 remand the case to any hearing officer for additional evidence, rehearing or
28 MODIFICATION OF decision.

29 E. ~~Upon~~ ON notice to all interested parties, the appeals board may
30 remove to itself any case pending before any hearing officer before a
31 decision becomes final.

32 F. The department shall prescribe by regulation procedures for
33 implementing ~~the provisions of~~ this section.

34 Sec. 4. Section 41-1993, Arizona Revised Statutes, is amended to read:
35 41-1993. Judicial review

36 A. Any party aggrieved by a decision of the director is entitled to
37 judicial review of the decision pursuant to ~~the provisions of~~ title 12,
38 chapter 7, article 6.

39 B. Any party aggrieved by a decision ~~upon~~ ON review of the appeals
40 board may file an application for appeal to the court of appeals with the
41 clerk of the appeals board within thirty days of the date of mailing OR
42 ELECTRONIC TRANSMISSION of the decision ~~upon~~ ON review, except as provided in
43 subsection C of this section. ~~Upon~~ ON the filing of an application for
44 appeal, the clerk of the appeals board shall transmit to the court of appeals
45 the application for appeal, the original decision of the appeals board, all

1 requests for review and responses, and the decision ~~upon~~ ON review of the
2 appeals board. The clerk of the appeals board shall also transmit any
3 portions of the record before the department requested by the court of
4 appeals. The clerk of the appeals board shall not process an application for
5 appeal unless the appellant has previously filed a timely request for review
6 under section 23-672 or 41-1992 and a decision ~~upon~~ ON review has been
7 issued. The court of appeals shall thereafter grant or deny the application
8 for appeal. If the application is denied, the decision ~~upon~~ ON review of the
9 appeals board shall be deemed final, and no further appeal may be taken. If
10 the application is granted, the rules for appeals in civil actions shall
11 apply, commencing with the preparation and transmittal of the complete record
12 before the department and a record index. No bond for costs on appeal or
13 docket fee shall be required. The department and all parties before the
14 appeals board shall be given notice of the appeal and an opportunity to
15 appear. All such appeals shall be limited to the record before the
16 department unless the court orders otherwise. No issue may be raised on
17 appeal which has not been raised in the request for review before the appeals
18 board. The department shall provide the record for use by the court and by
19 any parties who request copies. The cost of providing the record is a
20 taxable cost if the department prevails. The court of appeals may designate
21 one department or division one to hear all appeals under this section.

22 C. Any party aggrieved by a decision on review of the appeals board
23 concerning tax liability, collection or enforcement may appeal to the tax
24 court, as defined in section 12-161, within thirty days after the date of
25 mailing OR ELECTRONIC TRANSMISSION of the decision on review. The appellant
26 need not pay any of the tax, penalty or interest upheld by the appeals board
27 in its decision on review before initiating, or in order to maintain an
28 appeal to the tax court pursuant to this section.

29 D. Any appeal that is taken to tax court pursuant to this section is
30 subject to the following provisions:

31 1. No injunction, writ of mandamus or other legal or equitable process
32 may issue in an action in any court in this state against an officer of this
33 state to prevent or enjoin the collection of any tax, penalty or interest.

34 2. The action shall not begin more than thirty days after the date of
35 mailing OR ELECTRONIC TRANSMISSION of the appeals board's decision on review.
36 Failure to bring the action within thirty days after the date of mailing OR
37 ELECTRONIC TRANSMISSION of the appeals board's decision on review constitutes
38 a waiver of the protest and a waiver of all claims against this state arising
39 from or based on the illegality of the tax, penalties and interest at issue.

40 3. The scope of review of an appeal to tax court pursuant to this
41 section shall be governed by section 12-910, applying section 23-613.01 as
42 that section reads on the date the appeal is filed to the tax court or as
43 thereafter amended. Either party to the action may appeal to the court of
44 appeals or supreme court as provided by law.

1 4. The action cannot be initiated or maintained unless the appellant
2 has previously filed a timely request for review under section 23-672 or
3 41-1992 and a decision on review has been issued.

4 Sec. 5. Title 41, chapter 14, article 3, Arizona Revised Statutes, is
5 amended by adding section 41-1995, to read:

6 41-1995. Service of documents by electronic means

7 NOTWITHSTANDING SECTION 41-1002, SUBSECTION B AND SECTION 41-1063, THE
8 HEARING OFFICER OR APPEALS BOARD, AS AN ALTERNATIVE TO ANY OTHER MEANS OF
9 SERVICE PERMITTED OR REQUIRED BY ANY LAW, MAY SERVE OR DELIVER ANY NOTICE,
10 DECISION OR ORDER OR ANY OTHER DOCUMENT BY ELECTRONIC MEANS IF THE PARTY
11 BEING SERVED CONSENTS IN WRITING OR ON THE RECORD TO SERVICE BY ELECTRONIC
12 MEANS. SERVICE BY ELECTRONIC MEANS IS DEEMED COMPLETE ON TRANSMISSION.